

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 634 (First Edition)

SHORT TITLE: Increase Penalties/Gas Theft.

SPONSOR(S): Senator Newton

FISCAL IMPACT

(\$ in millions)

Yes No No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE December 1, 2013 and applies to offenses committed on or after that date.

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

This bill will have a fiscal impact. The following costs are estimated:

- Administrative Office of the Courts: \$165 - \$3,465 per case
- Indigent Defense Services: \$130 - \$436 in district court per case
\$272 - \$933 in superior court without a trial per case
\$1,199 - \$3,201 in superior court with a trial per case
- Prison Section: \$8,220 in the first year, \$24,594 in subsequent years
- Community Corrections: \$980-\$3,594 per case

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Section 1 of this bill amends existing G.S. 14-151, Interfering with gas, electric and steam appliances; penalties, to make it unlawful for any person to willfully, with intent to injure or defraud, commit any of the acts set forth in subdivisions (1) through (10) of subsection (a). The Class 2 misdemeanor penalty for violations of this section is removed from subsection (a). Subdivisions (2), (4), and (5) are amended to include “water” and make other clarifying changes.

New subdivision (9) makes it unlawful to reconnect electricity, gas, or water connections or otherwise turn back on one or more of those utilities when they have been lawfully disconnected or turned off by the provider of the utility. New subdivision (10) makes it unlawful to alter/bypass/interfere with any electric meter installed for the purpose of limiting the use of electricity at peak-load periods, unless there has been a written request to the utility to remove the device. If the device has not been removed within two working days there shall be no violation under this section.

New subsection (d) sets forth new criminal penalties for violations of this section. Violations of subdivisions (1) through (8) are Class F felonies. A violation of subdivision (9) or (10) is a Class 1 misdemeanor for the first offense; a Class H felony for the second offense; a Class G felony for the third offense; a Class F felony for offenses resulting in significant property damage or public endangerment; and a Class D felony for an offense that results in the death of another, unless the conduct is covered under some other provision of law providing greater punishment.

New subsection (f) provides an exception that nothing in this section shall be construed to apply to licensed contractors while performing usual and ordinary services in accordance with recognized customs and standards.

Section 2 repeals G.S. 14-151.1, Interfering with electric, gas or water meters; prima facie evidence of intent to alter, tamper with or bypass electric, gas or water meters; unlawful reconnection of electricity, gas, or water; civil liability.

This bill has an effective date of December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina’s court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

In FY 2011-12 there were 33 defendants charged with diverting utility use under G.S. 14-151, which is currently a Class 2 misdemeanor. Of those, four (12%) were convicted. Under this bill these offenses would now be punished as Class F felonies. Misdemeanors are handled in district court, but all pleas and trials for Class F felonies are handled in superior court. As the class F felonies in this bill will represent new charges in superior court, and since district court backlogs and personnel shortages would prevent any offsetting reduction in district court resources for those offenses increased from Class 2 misdemeanors to the Class F felonies, the average cost to the court will be \$912 per charge. If the same number of charges occur, the cost would be \$30,096 (33 charges times \$912).

Because violations of new subdivisions (9) and (10) represent new offenses, AOC does not have data upon which to estimate the number of charges that may arise. The offense of interfering with a utility meter that was repealed in Section 2 is incorporated into these subdivisions, but AOC does not have data on the circumstances involved in these offenses (see list in table below). AOC data shows that in FY 2011-12 there were 208 defendants charged with this offense, but, because the circumstances are unknown, the number of defendants that would fall into the different charge class categories is unknown. Of those charged with this offense, 34 (16%) were convicted.

The table below shows the average cost for a disposition for each charge class associated with these charges.

General Statute	Circumstance	Charge Class	Cost per Disposition
14-151(d)(2)(e)	Results in death of another	Class D Felony	\$3,465
14-151(d)(2)(d)	Results in significant property damage or public endangerment	Class F Felony	\$912
14-151(d)(2)(c)	Third offense	Class G Felony	\$752
14-151(d)(2)(b)	Second offense	Class H Felony	\$501
14-151(d)(2)(a)	First offense	Class 1 Misdemeanor	\$165

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. The following chart represents IDS' additional per case costs for each indigent case disposed in district court based on FY 2009-10 data.

General Statute	Current Class	Proposed Class	Per Case Original Cost for Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for Private Assigned Counsel
14-151(d)(1)	Class 2 MD	Class F Felony	\$166	\$296	\$130
14-151(d)(2)(a)	N/A	Class 1 MD	\$0	\$166	\$166
14-151(d)(2)(b)	N/A	Class H Felony	\$0	\$235	\$235
14-151(d)(2)(c)	N/A	Class G Felony	\$0	\$272	\$272
14-151(d)(2)(d)	N/A	Class F Felony	\$0	\$296	\$296
14-151(d)(2)(e)	N/A	Class D Felony	\$0	\$436	\$436

The following chart represents IDS' additional per case costs for each indigent case disposed in superior court based on FY 2009-10 data.

General Statute	Current Class	Proposed Class	Per Case Original Cost for Private Assigned Counsel	Per Case Proposed Cost for Private Assigned Counsel	Per Case Cost Increase for Private Assigned Counsel
14-151(d)(1)	Class 2 MD	Class F Felony	\$321 non-trial \$847 trial	\$593 non-trial \$2,046 trial	\$272 non-trial \$1,199 trial
14-151(d)(2)(a)	N/A	Class 1 MD	\$0 non-trial \$0 trial	\$321 non-trial \$847 trial	\$321 non-trial \$847 trial
14-151(d)(2)(b)	N/A	Class H Felony	\$0 non-trial \$0 trial	\$446 non-trial \$1,180 trial	\$446 non-trial \$1,180 trial
14-151(d)(2)(c)	N/A	Class G Felony	\$0 non-trial \$0 trial	\$534 non-trial \$1,524 trial	\$534 non-trial \$1,524 trial
14-151(d)(2)(d)	N/A	Class F Felony	\$0 non-trial \$0 trial	\$593 non-trial \$2,046 trial	\$593 non-trial \$2,046 trial
14-151(d)(2)(e)	N/A	Class D Felony	\$0 non-trial \$0 trial	\$933 non-trial \$3,201 trial	\$933 non-trial \$3,201 trial

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). Rows four and five in the chart demonstrate the impact of the bill. As shown, the Sentencing Commission estimates that this specific legislation will add six or more inmates to the prison system by the end of FY 2014-15.

¹ **Expanded Operating Capacity (EOC)** is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

Population Projections and Bed Capacity Five Year Impact					
	June 30 2013	June 30 2014	June 30 2015	June 30 2016	June 30 2017
1. Inmates ²	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
4. Additional Inmates Due to this Bill³	0	4+	6+	6+	6+
5. Additional Beds Required					

* The Sentencing and Policy Advisory Commission provides two year threshold projections. Projections beyond the two year horizon are estimates.

The Sentencing Commission and the Department of Public Safety were unable to estimate the additional number of inmates that could be sentenced to prison from other sections of this bill. The Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statutes.

The cost to add one additional inmate to the prison system is \$11.23 per day, which includes the cost of food, clothing, and health care. Based on estimates provided by the Sentencing Commission, there would be at least four additional inmates in the prison section in the first year, for a total cost of \$8,220 (\$11.23 for 183 days times 4 inmates). In every subsequent year, six (or more) inmates would be in the prison system, for a total cost of \$24,594 (\$11.23 for 365 days times 6 inmates).

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.⁴ General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

³ Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

⁴ CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Section 1 of this bill reclassifies the existing offenses (subdivisions (a)(1) through (8)) from Class 2 misdemeanors to Class F felonies pursuant to G.S. 14-151d(1). In FY 2011-12, there were four Class 2 misdemeanor convictions under G.S. 14-151. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average length of intermediate punishment imposed for this offense class was 33 months. The average length of intermediate and community punishment imposed for Class 2 misdemeanors was 16 and 13 months, respectively. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence ranges from \$2,178 (\$3,594 for a Class F felony minus \$1,416 for a Class 2 misdemeanor serving 13 months) to \$1,852 (\$3,594 for a Class F felony minus \$1,742 for a Class 2 misdemeanor serving 16 months).

This bill also expands the existing offenses by adding references to “water and “bypass or tamper with” meters. This conduct was previously covered under G.S. 14-151.1(a). There were 34 Class 1 misdemeanor convictions under G.S. 14-151.1 during FY 2011-12. It is not known how many additional convictions may result from the proposed broadening of the current statute (reclassified to a Class F felony). All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average length of intermediate punishment imposed for this offense class was 33 months. The average length of intermediate and community punishment imposed for Class 1 misdemeanors was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence ranges from \$1,960 (\$3,594 for a Class F felony minus \$1,634 for a Class 1 misdemeanor serving 15 months) to \$1,634 (\$3,594 for a Class F felony minus \$1,960 for a Class 1 misdemeanor serving 18 months).

This bill also adds two new offenses – G.S. 14-151(a)(9) and G.S. 14-151(a)(10). This conduct was previously covered under G.S. 14-151.1(b1). In FY 2011-12, there were 34 convictions under this statute. The first offense for both offenses is a Class 1 misdemeanor. Of the 34 convictions, eleven had no prior convictions. Of those eleven, 27% received an active sentence. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and 72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanor sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is \$1,960 (540 days times \$3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is \$1,634 (450 days times \$3.63 per day).

The second offense is a Class H felony, whether or not the first offense was a violation of a different subsection. It is not known how many offenders may be repeat offenders under the proposed statute. While the AOC database contains information on the number of prior conviction points, it does not contain information about specific offenses that are used to calculate the number of prior conviction points. In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release

⁵ Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average length of intermediate and community punishment imposed for this offense class was 29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is \$3,158 (870 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is \$2,831 (780 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

The third offense is a Class G felony, whether or not the second offense was a violation of a different subsection. In FY 2011-12, 42% of Class G felony offenders received active sentences; 58% received intermediate sentences. All active Class G sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average length of intermediate punishment imposed for this offense class was 31 months. The average cost to community corrections for any individual convicted of a Class G felony who receives an intermediate sentence is \$3,376 (930 days times \$3.63 per day).

In addition, this bill makes it a Class F felony if the offense results in significant property damage or public endangerment. It is unknown if any of the 34 Class 1 convictions in FY 2011-12 resulted in significant property damage or public endangerment. In FY 2011-12, 53% of Class F felony offenders received active sentences; 47% received intermediate sentences. All active Class F sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).⁵ The average lengths of intermediate punishment imposed for this offense class was 33 months. The average cost to community corrections for any individual convicted of a Class F felony who receives an intermediate sentence is \$3,594 (990 days times \$3.63 per day).

Finally, this bill makes the offense a Class D felony if it results in the death of another. It is unknown if any of the 34 Class 1 convictions in FY 2011-12 resulted in the death of another. In FY 2011-12, 100% of Class D felony offenders received active sentences; none received intermediate sentences; and none received community punishments. Regardless of the length of the active sentence, all offenders convicted of this statute are subject to twelve months of post-release supervision (PRS) for this felony class. The cost of twelve months of PRS is \$1,325 per offender (\$3.63 per day times 365 days).⁵

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

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DATE: May 2, 2013



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